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ARTEC GROUP, INC.

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

15 ARTEC GROUP, INC., a California  
16 Corporation,

) Case No. 15-cv-03449-<sup>J</sup>

Plaintiff

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER FOR  
LITIGATION INVOLVING PATENTS,  
HIGHLY SENSITIVE CONFIDENTIAL  
INFORMATION AND/OR TRADE  
SECRETS**

18 | VS.  
ANDREY KLIMOV, et al.

Trial Date: None Set

Action Filed: July 27, 2015

## 24 | 1. PURPOSES AND LIMITATIONS

25 Disclosure and discovery activity in this action are likely to involve production of  
26 confidential, proprietary, or private information for which special protection from public  
27 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
28 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated

1 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
 2 all disclosures or responses to discovery and that the protection it affords from public disclosure  
 3 and use extends only to the limited information or items that are entitled to confidential treatment  
 4 under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4,  
 5 below, that this Stipulated Protective Order does not entitle them to file confidential information  
 6 under seal. Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards  
 7 that will be applied when a party seeks permission from the court to file material under seal.

8 **2. DEFINITIONS**

9       2.1    Challenging Party: a Party or Non-Party that challenges the designation of  
 10 information or items under this Order.

11       2.2    “CONFIDENTIAL” Information or Items: information (regardless of how it is  
 12 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
 13 of Civil Procedure 26(c).

14       2.3    Counsel (without qualifier): Outside Counsel and House Counsel (as well as their  
 15 support staff).

16       2.4    Designated House Counsel: House Counsel who seek access to “HIGHLY  
 17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
 18 CODE” information in this matter.

19       2.5    Designating Party: a Party or Non-Party that designates information or items that it  
 20 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “HIGHLY  
 21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE  
 22 CODE.”

23       2.6    Disclosure or Discovery Material: all items or information, regardless of the  
 24 medium or manner in which it is generated, stored, or maintained (including, among other things,  
 25 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
 26 responses to discovery in this matter.

27       2.7    Expert: a person with specialized knowledge or experience in a matter pertinent to  
 28 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as

1 a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
 2 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or  
 3 of a Party's competitor.

4       2.8     "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
 5 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another  
 6 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
 7 less restrictive means.

8       2.9     "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely  
 9 sensitive "Confidential Information or Items" representing computer code and associated  
 10 comments and revision histories, formulas, engineering specifications, or schematics that define or  
 11 otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure  
 12 of which to another Party or Non-Party would create a substantial risk of serious harm that could  
 13 not be avoided by less restrictive means.

14       2.10    House Counsel: attorneys who are employees of any of the "Artec Group of  
 15 Companies," as defined in the operative Complaint or employees of ID-WISE SIA or A-STAR  
 16 LLC. House Counsel does not include Outside Counsel.

17       2.11    Non-Party: any natural person, partnership, corporation, association, or other legal  
 18 entity not named as a Party to this action.

19       2.11    Outside Counsel: The term "Outside Counsel" means attorneys (including litigation  
 20 and clerical support staff thereof) who are not employees of a Party to this Litigation but are  
 21 retained to represent or advise a Party in connection with the subject matter of this Litigation. The  
 22 term "Outside Counsel" includes outside counsel of record who have appeared in this action on  
 23 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party, as  
 24 well as other retained counsel that has not appeared but has executed the "Acknowledgement and  
 25 Agreement to Be Bound" (Exhibit A).

26       2.13    Party: any party to this action, including all of its officers, directors, employees,  
 27 consultants, retained experts, and Outside Counsel (and their support staffs).

28

1           2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
2 Material in this action.

3           2.15 Professional Vendors: persons or entities that provide litigation support services  
4 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
5 organizing, storing, or retrieving data in any form or medium) and their employees and  
6 subcontractors.

7           2.16 Protected Material: any Disclosure or Discovery Material that is designated as  
8 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," or as  
9 "HIGHLY CONFIDENTIAL – SOURCE CODE."

10          2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
11 Producing Party.

12 3. SCOPE

13          The protections conferred by this Stipulation and Order cover not only Protected Material  
14 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
15 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
16 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
17 However, the protections conferred by this Stipulation and Order do not cover the following  
18 information: (a) any information that is in the public domain at the time of disclosure to a  
19 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a  
20 result of publication not involving a violation of this Order, including becoming part of the public  
21 record through trial or otherwise; and (b) any information known to the Receiving Party prior to  
22 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained  
23 the information lawfully and under no obligation of confidentiality to the Designating Party. Any  
24 use of Protected Material at trial shall be governed by a separate agreement or order.

25 4. DURATION

26          Even after final disposition of this litigation, the confidentiality obligations imposed by this  
27 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
28 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims

1 and defenses in this action, with or without prejudice; and (2) final judgment herein after the  
2 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
3 including the time limits for filing any motions or applications for extension of time pursuant to  
4 applicable law. For a period of six months after final disposition of this litigation, this court will retain  
jurisdiction to enforce the terms of this order.

5 **5. DESIGNATING PROTECTED MATERIAL**

6       **5.1 Exercise of Restraint and Care in Designating Material for Protection.** Each Party  
7 or Non-Party that designates information or items for protection under this Order must take care to  
8 limit any such designation to specific material that qualifies under the appropriate standards. To  
9 the extent it is practical to do so, the Designating Party must designate for protection only those  
10 parts of material, documents, items, or oral or written communications that qualify – so that other  
11 portions of the material, documents, items, or communications for which protection is not  
12 warranted are not swept unjustifiably within the ambit of this Order.

13       Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
14 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
15 unnecessarily encumber or retard the case development process or to impose unnecessary  
16 expenses and burdens on other parties) expose the Designating Party to sanctions.

17       If it comes to a Designating Party's attention that information or items that it designated  
18 for protection do not qualify for protection at all or do not qualify for the level of protection  
19 initially asserted, that Designating Party must promptly notify all other parties that it is  
20 withdrawing the mistaken designation.

21       **5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order  
22 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
23 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
24 designated before the material is disclosed or produced.

25       Designation in conformity with this Order requires:

26           (a) for information in documentary form (e.g., paper or electronic documents, but  
27 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
28 affix the legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES

1 ONLY," or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page by watermark or other  
2 label, that contains protected material. If only a portion or portions of the material on a page  
3 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)  
4 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level  
5 of protection being asserted.

6 A Party or Non-Party that makes original documents or materials available for inspection  
7 need not designate them for protection until after the inspecting Party has indicated which material  
8 it would like copied and produced. During the inspection and before the designation, all of the  
9 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –  
10 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants  
11 copied and produced, the Producing Party must determine which documents, or portions thereof,  
12 qualify for protection under this Order. Then, before producing the specified documents, the  
13 Producing Party must affix the appropriate legend ("CONFIDENTIAL," "HIGHLY  
14 CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL – SOURCE  
15 CODE") to each page that contains Protected Material. If only a portion or portions of the material  
16 on a page qualifies for protection, the Producing Party also must clearly identify the protected  
17 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
18 portion, the level of protection being asserted.

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
20 Designating Party identify on the record, before the close of the deposition, hearing, or other  
21 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
22 impractical to identify separately each portion of testimony that is entitled to protection and it  
23 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
24 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right  
25 to have up to 21 days following receipt of the transcript to identify the specific portions of the  
26 testimony as to which protection is sought and to specify the level of protection being asserted.  
27 Only those portions of the testimony that are appropriately designated for protection within the 21  
28 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a

1 Designating Party may specify, at the deposition or up to 21 days following receipt if that period is  
 2 properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
 3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

4 Parties shall give the other parties notice if they reasonably expect a deposition,  
 5 hearing or other proceeding to include Protected Material so that the other parties can  
 6 ensure that only authorized individuals who have signed the “Acknowledgment and  
 7 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a  
 8 document as an exhibit at a deposition shall not in any way affect its designation as  
 9 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
 10 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

11 Transcripts containing Protected Material shall have an obvious legend on the title  
 12 page that the transcript contains Protected Material, and the title page shall be followed by a  
 13 list of all pages (including line numbers as appropriate) that have been designated as  
 14 Protected Material and the level of protection being asserted by the Designating Party. The  
 15 Designating Party shall inform the court reporter of these requirements. Any transcript that  
 16 is prepared before the expiration of a 21-day period for designation shall be treated during  
 17 that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
 18 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the  
 19 transcript shall be treated only as actually designated.

20 (c) for information produced in some form other than documentary and for any other  
 21 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
 22 or containers in which the information or item is stored the legend “CONFIDENTIAL,”  
 23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” “HIGHLY CONFIDENTIAL –  
 24 SOURCE CODE.” If only a portion or portions of the information or item warrant protection, the  
 25 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the  
 26 level of protection being asserted.

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 28 designate qualified information or items does not, standing alone, waive the Designating Party’s

1 right to secure protection under this Order for such material. Upon timely correction of a  
 2 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
 3 in accordance with the provisions of this Order.

4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5       **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a designation of  
 6 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
 7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 8 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
 9 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 10 original designation is disclosed.

11       **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute resolution  
 12 process by providing written notice of each designation it is challenging and describing the basis  
 13 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
 14 notice must recite that the challenge to confidentiality is being made in accordance with this  
 15 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
 16 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
 17 forms of communication are not sufficient) within 14 days of the date of service of notice unless  
 18 extended by written agreement of the parties. In conferring, the Challenging Party must explain  
 19 the basis for its belief that the confidentiality designation was not proper and must give the  
 20 Designating Party an opportunity to review the designated material, to reconsider the  
 21 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
 22 designation. A Challenging Party may seek judicial intervention proceed to the next stage of the challenge process only if it  
 23 has engaged in this meet and confer process first or establishes that the Designating Party is  
 24 unwilling to participate in the meet and confer process in a timely manner, serve notice of a challenge  
 25 at any time for good cause, including challenge of some or all of a deposition transcript.

26       **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge without court  
 27 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
 Any Discovery Dispute Joint Report shall affirm compliance with both the terms of paragraph 6.2 in this  
 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days  
 following receipt of the initial notice of challenge or within 14 days of the parties agreeing that the  
 Standing Order re: Civil Discovery Disputes.

1 meet and confer process will not resolve their dispute, whichever is earlier, unless extended by  
 2 written agreement of the parties. Each such motion must be accompanied by a competent  
 3 declaration affirming that the movant has complied with the meet and confer requirements  
 4 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion  
 5 including the required declaration within 21 days (or 14 days, if applicable), unless extended by  
 6 written agreement, shall automatically waive the confidentiality designation for each challenged  
 7 designation. In addition, the Challenging Party may file a motion challenging a confidentiality  
 8 designation at any time if there is good cause for doing so, including a challenge to the designation  
 9 Any Discovery Dispute Report related  
 10 of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision  
 11 must be accompanied by a competent declaration affirming that the movant has complied with the  
 12 both paragraph 6.2 of this protective order and the separate  
 13 meet and confer requirements imposed by the preceding paragraph.  
 14 requirements in the Standing Order.

15 The burden of persuasion in any such challenge proceeding shall be on the Designating  
 16 Party. However, the burden of persuasion shall shift to the Challenging Party to avoid an abuse of  
 17 the process (a) after the Challenging Party makes two (2) consecutive unsuccessful challenges, or  
 18 (b) after the Court rules that any challenge was frivolous or made for an improper purpose (e.g., to  
 19 harass or impose unnecessary expenses and burdens on other parties). The burden of persuasion  
 20 shall shift back to the Designating Party under the same conditions as applicable to the  
 21 Challenging Party.

22 Frivolous challenges and those made for an improper purpose may expose the Challenging  
 23 Party to sanctions. Unless the Designating Party has waived the confidentiality designation by  
 24 The Designating Party waives confidentiality if a confidentiality designation remains  
 25 disputed for 4 weeks without either party attempting to seek judicial intervention; otherwise  
 26 failing to file a motion to retain confidentiality as described above, all parties shall continue to  
 27 afford the material in question the level of protection to which it is entitled under the Producing  
 28 Party's designation until the court rules on the challenge. Discovery Dispute Joint Report.

29 7. ACCESS TO AND USE OF PROTECTED MATERIAL

30 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
 31 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 32 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
 33 the categories of persons and under the conditions described in this Order. When the litigation has

1 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
 2 DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location and in  
 4 a secure manner that ensures that access is limited to the persons authorized under this Order.

5       7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
 6 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
 7 information or item designated “CONFIDENTIAL” only to:

8           (a) the Receiving Party’s Outside Counsel, as well as employees of said Outside Counsel  
 9 to whom it is reasonably necessary to disclose the information for this litigation and who have  
 10 signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

11           (b) the officers, directors, and employees (including House Counsel) of the Receiving  
 12 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
 13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14           (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
 15 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
 16 Agreement to Be Bound” (Exhibit A);

17           (d) the court and its personnel;

18           (e) court reporters and their staff, professional jury or trial consultants, mock jurors to  
 19 further trial preparation, and Professional Vendors to whom disclosure is reasonably necessary for  
 20 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
 21 A);

22           (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
 23 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),

24 unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
 25 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
 26 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
 27 under this Stipulated Protective Order.

28

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

3      7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" and  
4      "HIGHLY CONFIDENTIAL - SOURCE CODE" Information or Items. Unless otherwise ordered  
5      by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
6      information or item designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" or  
7      "HIGHLY CONFIDENTIAL - SOURCE CODE" only to:

8 (a) the Receiving Party's Outside Counsel, as well as employees of said Outside Counsel  
9 to whom it is reasonably necessary to disclose the information for this litigation and who have  
10 signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

11 (b) Designated House Counsel of the Receiving Party (1) to whom disclosure is reasonably  
12 necessary for this litigation, and (2) who has signed the "Acknowledgment and Agreement to Be  
13 Bound" (Exhibit A);

14 (e) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this  
15 litigation, and (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
16 A);

17 (d) the court and its personnel;

18 (e) court reporters and their staff, professional jury or trial consultants, and Professional  
19 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
20 "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

23       7.4. "~~CONFIDENTIAL~~," "~~HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY~~"  
24 and "~~HIGHLY CONFIDENTIAL - SOURCE CODE~~" information or items may be disclosed to  
25 an Expert as long as the Expert is not a current officer, director, or employee of a competitor of a  
26 Party or anticipated to become one. Such expert shall be required to execute the Acknowledgment  
27 and Agreement to be Bound as a precondition of receiving such information or items."

**7.3 Disclosure of "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" and "HIGHLY CONFIDENTIAL-SOURCE CODE" Information or Items.** Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL-SOURCE CODE" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) Designated House Counsel of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who has signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

(c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY CONFIDENTIAL–ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL–SOURCE CODE" Information or Items to Experts.

(a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been designated "HIGHLY CONFIDENTIAL–ATTORNEYS EYES ONLY" or "HIGHLY CONFIDENTIAL–

1        SOURCE CODE' pursuant to paragraph 7.3(b) first must make a written request to the Designating Party  
 2        that (1) sets forth the full name of the Designated House Counsel and the city and state of his or her  
 3        residence, and (2) describes the Designated House Counsel's current and reasonably foreseeable future  
 4        primary job duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may  
 5        become involved, in any competitive decision-making.

6                         (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating  
 7        Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has  
 8        been designated 'HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY' or 'HIGHLY CONFIDENTIAL  
 9        -SOURCE CODE] pursuant to paragraph 7.3(c) first must make a written request to the Designating Party  
 10      that (1) identifies the general categories of 'HIGHLY CONFIDENTIAL-ATTORNEYS EYES ONLY' or  
 11      'HIGHLY CONFIDENTIAL-SOURCE CODE' information that the Receiving Party seeks permission to  
 12      disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary  
 13      residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s),  
 14      (5) identifies each person or entity from whom the Expert has received compensation or funding for work in  
 15      his or her areas of expertise or to whom the expert has provided professional services, including in  
 16      connection with a litigation, at any time during the preceding five years, and (6) identifies (by name and  
 17      number of the case, filing date, and location of court) any litigation in connection with which the Expert has  
 18      offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during  
 19      the preceding five years.

20                         (b) A Party that makes a request and provides the information specified in the preceding  
 21      respective paragraphs may disclose the subject Protected Material to the identified Designated House  
 22      Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection  
 23      from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

24                         (c) A Party that receives a timely written objection must meet and confer with the  
 25      Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within  
 26      seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to  
 27      Designated House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in

1 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such  
2 motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to  
3 Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure  
4 would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such  
5 motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter  
6 by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the  
7 reasons advanced by the Designating Party for its refusal to approve the disclosure.

8 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert  
9 shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards  
10 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated House  
11 Counsel or Expert.

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1    8. SOURCE CODE

- 2                 (a) To the extent production of source code becomes necessary in this case, a  
 3 Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE"  
 4 if it comprises or includes confidential, proprietary or trade secret source code.
- 5                 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE CODE"  
 6 shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL –  
 7 ATTORNEYS' EYES ONLY" information, and may be disclosed only to the individuals to whom  
 8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be disclosed, as  
 9 set forth in Paragraphs 7.3 and 7.4
- 10                (c) Any source code produced in discovery shall be made available for inspection in a  
 11 format through which it could be reasonably reviewed and searched during normal business hours  
 12 or other mutually agreeable times at a location that is reasonably convenient for the Receiving  
 13 Party and any experts to whom the source code may be disclosed. This alternative may be  
 14 appropriate if the Producing Party and/or its counsel are located in a different jurisdiction than  
 15 counsel and/or experts for the Receiving Party. The source code shall be made available for  
 16 inspection on a secured computer in a secured room without Internet access or network access to  
 17 other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion  
 18 of the source code onto any recordable media or recordable device. The Producing Party may  
 19 visually monitor the activities of the Receiving Party's representatives during any source code  
 20 review, but only to ensure that there is no unauthorized recording, copying, or transmission of the  
 21 source code.
- 22                (d) The Receiving Party may request paper copies of limited portions of source code  
 23 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other  
 24 papers, or for deposition or trial, but shall not request paper copies for the purposes of reviewing  
 25 the source code other than electronically as set forth in paragraph (c) in the first instance. The  
 26 Producing Party shall provide all such source code in paper form including bates numbers and the  
 27 label "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing Party may challenge the  
 28 amount of source code requested in hard copy form pursuant to the dispute resolution procedure

1 and timeframes set forth in Paragraph 6 whereby the Producing Party is the “Challenging Party”  
 2 and the Receiving Party is the “Designating Party” for purposes of dispute resolution.

3       (e)     The Receiving Party shall maintain a record of any individual who has inspected  
 4 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all  
 5 paper copies of any printed portions of the source code in a secured, locked area. The Receiving  
 6 Party shall not create any electronic or other images of the paper copies and shall not convert any  
 7 of the information contained in the paper copies into any electronic format. The Receiving Party  
 8 shall only make additional paper copies if such additional copies are (1) necessary to prepare court  
 9 filings, pleadings, or other papers (including a testifying expert’s expert report), (2) necessary for  
 10 deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during  
 11 a deposition shall be retrieved by the Producing Party at the end of each day and must not be given  
 12 to or left with a court reporter or any other unauthorized individual.

13       (f) Receiving Party shall provide notice to the Producing Party before including “HIGHLY  
 14 CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading, or expert report.

15 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
 16 LITIGATION

17       If a Party is served with a subpoena or a court order issued in other litigation that compels  
 18 disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
 19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –  
 20 SOURCE CODE” that Party must:

21           (a) promptly notify in writing the Designating Party. Such notification shall include a copy  
 22 of the subpoena or court order;

23           (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
 24 other litigation that some or all of the material covered by the subpoena or order is subject to this  
 25 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

26           (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
 27 Designating Party whose Protected Material may be affected.

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1       If the Designating Party timely seeks a protective order, the Party served with the subpoena  
 2 or court order shall not produce any information designated in this action as “CONFIDENTIAL”  
 3 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY  
 4 CONFIDENTIAL – SOURCE CODE” before a determination by the ~~court from which the~~  
 Civ. P. 45(d)(3)  
 5 ~~subpoena or order issued~~, unless the Party has obtained the Designating Party’s permission. The  
 6 Designating Party shall bear the burden and expense of seeking protection in that court of its  
 7 confidential material – and nothing in these provisions should be construed as authorizing or  
 8 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9       10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
 10           LITIGATION

11       (a)     The terms of this Order are applicable to information produced by a Non-Party in  
 12 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
 13 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. Such  
 14 information produced by Non-Parties in connection with this litigation is protected by the  
 15 remedies and relief provided by this Order. Nothing in these provisions should be construed as  
 16 prohibiting a Non-Party from seeking additional protections.

17       (b)     In the event that a Party is required, by a valid discovery request, to produce a Non-  
 18 Party’s confidential information in its possession, and the Party is subject to an agreement with the  
 19 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

20       1.     promptly notify in writing the Requesting Party and the Non-Party that some or all  
 21 of the information requested is subject to a confidentiality agreement with a Non-Party;

22       2.     promptly provide the Non-Party with a copy of the Stipulated Protective Order in  
 23 this litigation, the relevant discovery request(s), and a reasonably specific description of the  
 24 information requested; and

25       3.     make the information requested available for inspection by the Non-Party.

26       (c)     If the Non-Party fails to object or seek a protective order from this court within 14  
 27 days of receiving the notice and accompanying information, the Receiving Party may produce the  
 28 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely

1 seeks a protective order, the Receiving Party shall not produce any information in its possession or  
 2 control that is subject to the confidentiality agreement with the Non-Party before a determination  
 3 by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
 4 of seeking protection in this court of its Protected Material.

5 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
 7 Material to any person or in any circumstance not authorized under this Stipulated Protective  
 8 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
 9 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected  
 10 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
 11 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and  
 12 Agreement to Be Bound" that is attached hereto as Exhibit A.

13 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
 14 MATERIAL

15 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
 16 produced material is subject to a claim of privilege or other protection, the obligations of the  
 17 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). The parties  
 18 may agree that the recipient of an inadvertent production may not "sequester" or in any way use  
 19 the document(s) pending resolution of a challenge to the claim of privilege or other protection to  
 20 the extent it would be otherwise allowed by Federal Rule of Civil Procedure 26(b)(5)(B) as  
 21 amended in 2006. This could include a restriction against "presenting" the document(s) to the  
 22 court to challenge the privilege claim as may otherwise be allowed under Rule 26(b)(5)(B) subject  
 23 to ethical obligations.

24 This provision is not intended to modify whatever procedure may be established in an e-  
 25 discovery order that provides for production without prior privilege review. Pursuant to Federal  
 26 Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of  
 27 disclosure of a communication or information covered by the attorney-client privilege or work  
 28

1 product protection, the parties may incorporate their agreement in the stipulated protective order  
2 submitted to the court.

3 13. MISCELLANEOUS

4       13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
5 seek its modification by the court in the future.

6       13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
7 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
8 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
9 Party waives any right to object on any ground to use in evidence of any of the material covered  
10 by this Protective Order.

11       13.3 Export Control. Disclosure of Protected Material shall be subject to all applicable  
12 laws and regulations relating to the export of technical data contained in such Protected Material,  
13 including the release of such technical data to foreign persons or nationals in the United States or  
14 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical  
15 data, and the Receiving Party shall take measures necessary to ensure compliance.

16       13.4 Filing Protected Material. Without written permission from the Designating Party  
17 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
18 the public record in this action any Protected Material. A Party that seeks to file under seal any  
19 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
20 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
21 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
22 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
23 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
24 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving  
25 Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2)  
26 unless otherwise instructed by the court.

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1   14. FINAL DISPOSITION

2           Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
3 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
4 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
5 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
6 the Protected Material is returned or destroyed, the Receiving Party must submit a written  
7 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
8 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected  
9 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained  
10 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any  
11 of the Protected Material.

12           /// 15. All discovery and disclosure disputes are subject to the undersigned's Standing Order.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: \_\_\_\_\_

3 By: /s/ \_\_\_\_\_

4 Louise Ann Fernandez  
An Nguyen Ruda  
Jeffer Mangels Butler & Mitchell LLP

5 Benjamin Davidson  
6 Law Offices of Benjamin Davidson, P.C.

7 Attorneys for Plaintiff  
8 ARTEC GROUP, INC.

9

10 DATED: \_\_\_\_\_

11 By: /s/ \_\_\_\_\_

12 Oly Filatova  
Law Offices of Oly Filatova  
Igor Shoiket  
Dergosits & Noah LLP

13

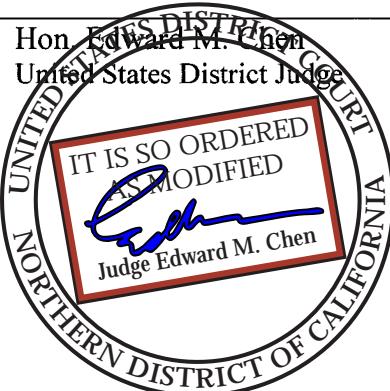
14 Attorneys for Defendants  
15 ANDREY KLIMOV; YULIA KLIMOVA; ANNA  
16 STEBLEVA

17

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19 Regarding paragraph 6.3 (Judicial Intervention), this Court's standing order on discovery does not  
20 preclude other requirements if imposed by the magistrate judge to whom discovery has been referred.  
21 1/27/17

22 DATED: \_\_\_\_\_



## EXHIBIT A

## **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
5 understand the Stipulated Protective Order that was issued by the United States District Court for  
6 the Northern District of California on [date] in the case of *Artec Group, Inc. v. Andrey Klimov, et*  
7 *al.*, Northern District of California Case No. 15-cv-03449-HRL. I agree to comply with and to be  
8 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that  
9 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I  
10 solemnly promise that I will not disclose in any manner any information or item that is subject to  
11 this Stipulated Protective Order to any person or entity except in strict compliance with the  
12 provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the  
14 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
15 Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint \_\_\_\_\_ [print or type full name] of  
17 \_\_\_\_\_ [print or type full address and telephone number]  
18 as my California agent for service of process in connection with this action or any proceedings  
19 related to enforcement of this Stipulated Protective Order.

21 | Date:

22 | City and State where sworn and signed:

23 Printed name: \_\_\_\_\_  
24 [printed name]

25 Signature: \_\_\_\_\_  
[signature]